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Spain – Modifications to Impatriate Regime and Exit Tax

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As we reported in GMS [Flash Alert 2015-094](#) (July 31, 2015), changes were enacted on July 11, 2015, in Spain by means of a Royal Decree that developed the rules concerning the so-called exit tax with respect to the unrealized capital gains on shares when a taxpayer ceases to be resident in Spain. In addition, the rules were modified affecting the calculation of the tax due and the documentation requirements in respect of the Special Tax Regime for impatriates.

Why This Matters

These changes clarify certain questions and challenges that arose with respect to tax compliance under the rules governing the taxation on capital gains when a change of residence occurs (the “exit tax”) and the Special Tax Regime for Impatriates. These changes should streamline administrative burdens, foster better compliance, and potentially lower tax burdens.

Employers of international assignees should take note of the important amendments that were introduced to the rules for the calculation of the tax due for individuals taxed under the Special Tax Regime for Impatriates, including a new tax relief to avoid double taxation. This could advantageously impact their international assignment costs.

On July 11, 2015, measures in Spain's Royal Decree 633/2015¹ were introduced modifying the Personal Income Tax Regulation (PITR) and Non Residents Income Tax Regulation (NRITR). The amendments follow on the recent changes made to the Personal Income Tax Law (PITL) and Non Residents Income Tax Law (NRITL) with effect from January 2015, which we previously had reported on in [Flash International Executive Alert 2014-120](#), December 18, 2014.

In this newsletter, we discuss the changes to:

- the capital gains tax rules when ceasing to be Spanish tax resident;
- the special tax regime for impatriates; and
- the nonresident personal income tax regime.

Capital Gains and Losses

Taxation on Capital Gains due to Change of Residence (“Exit Tax”)

The recent modifications to the PITL introduced new taxation on unrealized gains on shares (including collective investment institutions). As such, when the taxpayer ceases to have resident tax status, taxation on capital gains derived from shares might operate. This ‘new’ exit tax will only be applied in cases of shares whose value exceed EUR 4,000,000, or EUR 1,000,000, if the taxpayer's holdings, as a percentage share, exceed 25 percent. (For prior coverage of changes to this regime, see [Flash International Executive Alert 2014-120](#), December 18, 2014.)

This income is only subject to taxation when the taxpayer has been considered resident in Spain for tax purposes for at least 10 years during the prior 15 fiscal years.

The PITR establishes the deadline to report those unrealized gains, the requirements to apply for a deferral of the tax due, or for an extension in the cases of a temporary transfer to certain other countries, as well as the requirements regarding the communications and deadline for purposes of reporting the gain (where a transfer to another European Union (EU) country has occurred).

Special Tax Regime for Impatriates

The PITR establishes special rules for the calculation of the tax due and defines the documents that have to be filed to request the Special Tax Regime for impatriates. (For prior coverage of changes to this regime, see [Flash International Executive Alert 2014-120](#), December 18, 2014.)

- The PITR clarifies that income related to an activity performed prior to the assignment to Spain by the taxpayer who has been granted the Special Tax Regime, will not be deemed as obtained in Spain. Moreover, income obtained once the assignment in Spain is over, provided that the taxpayer maintains Spanish tax resident status for said year, and the relevant notification is filed within a month with the tax authorities, that income will not be deemed as obtained in Spain.
- A tax relief to avoid double taxation has been included in the Special Tax Regime. It is limited to 30 percent of the tax payable on the total employment income received in the fiscal year.
- If the taxpayer breaches any of the requirements, he must communicate to his employer the inapplicability of the Special Tax Regime and the employer must consequently apply appropriate withholding taxes according to the PIT Law general rates as at that time.
- The PITR establishes the supporting documentation that must be filed for the purposes of applying for the Special Tax Regime in each case, depending on whether the transfer to Spain is a consequence of an international assignment, of a new labor relationship with a Spanish employer, or of being appointed as Director of a company.
- The taxpayer must communicate to the Spanish tax authorities the inapplicability of the Special Tax Regime as soon as his assignment in Spain is over – that is, within a month of the termination of the assignment.

Nonresident Personal Income Tax Modifications

A brief summary of the latest modifications with regards to the NRITR is provided below:

- As a new offering, the Spanish tax authorities will issue, upon the taxpayer's request, a draft assessment of a nonresident's tax returns on his deemed real estate income.
- The new NRITR further develops the Special Regime where individuals resident in another EU country, could opt to be taxed as "ordinary tax residents" under the Personal Income Tax provisions.
- The NRITR also defines the requirements for a taxpayer resident in an EU country to apply for the refund of his taxes resulting from the application of the exemption for the transfer and reinvestment in respect of his habitual residence.

Footnote:

1 Please see, *Real Decreto 633/2015, de 10 de julio, por el que se modifican el Reglamento del Impuesto sobre la Renta de las Personas Físicas, aprobado por el Real Decreto 439/2007, de 30 de marzo, y el Reglamento del Impuesto sobre la Renta de no Residentes, aprobado por el Real Decreto 1776/2004, de 30 de julio* at: <http://www.boe.es/boe/dias/2015/07/11/pdfs/BOE-A-2015-7770.pdf> .

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Labor Law and International Assignments Survey for You to Take

We invite you to take a brief survey prepared by the Legal Services team* within the KPMG International member firm in Germany. This is a benchmarking survey regarding multinational organizations' global labor law awareness and practices. To take the survey, click [here](#).

The aim of this short [survey](#) is to gain insight and provide benchmarks on global labor law practices and considerations in the context of international assignments. This will enable organizations to keep abreast of trends in this oft-overlooked area and to identify market-standard practices of benefit to both the organization and the assignee.

The survey is also accessible on mobile devices and should take no longer than 10 – 15 minutes to complete.

The closing date for the [survey](#) is Friday, 14 August 2015. Results can be provided upon request.

** There are Legal Services teams present in over 50 KPMG International member firms around the world, working along-side Global Mobility Services tax and immigration professionals to help employers make sense of and stay compliant with the labor rules and practices that apply to their assignees working in a cross-border context. **Please note that KPMG LLP (U.S.) does not offer services related to matters of labor law.***

The information contained in this newsletter was submitted by the KPMG International member firm in Spain. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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